

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.                     )  
   )  
                                  Plaintiffs,                     )  
   )  
vs.   ) 05-CV-0329 TCK-SAJ  
   )  
TYSON FOODS, INC., et al.,                     )  
   )  
                                  Defendants.                     )

**TYSON CHICKEN, INC.'S SECOND AMENDED RESPONSE TO PLAINTIFFS'  
FIRST SET OF INTERROGATORIES**

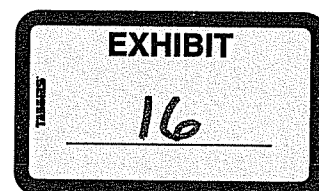
Pursuant to the Court's Order dated December 7, 2007 (Dkt. No. 1409), Defendants TYSON CHICKEN, INC. (hereinafter referred to as "Defendant" or "Tyson Chicken"), submits its Second Amended Response to subsection (d) of Plaintiffs' Interrogatory No. 1. This Second Amended Response supplements all prior responses to subsection (d) of Plaintiffs' Interrogatory No. 1.

**INTERROGATORIES**

**INTERROGATORY NO. 1:** For each of your poultry growing operations in the IRW since 1952, please provide the following information:

- a. name and physical location of the operation;
- b. dates of operation;
- c. type of operation (breeder, broiler, layer, etc.);
- d. number of birds (aggregated annually) at each location; and,
- e. name of the owner and operator.

**RESPONSE TO INTERROGATORY NO. 1(d):** Tyson Chicken objects to



Interrogatory No. 1 as it is overly broad in scope and time and, therefore, overly burdensome. Tyson Chicken specifically objects to the Plaintiffs' definition of "Defendant" as it is overly broad and includes within its scope "Contract Growers." Tyson Chicken submits this answer and response for itself and not for any other person or entity.

Tyson Chicken does not possess information sufficient to answer Interrogatory No. 1(d). Tyson Chicken has not historically identified contract poultry growing operations by watershed and does not in the regular course of business track or report bird production by watershed nor does Tyson Chicken calculate or record bird production on an aggregated annual basis as part of its regular business practices. Accordingly, Tyson Chicken does not know the total number of birds raised on farms under contract with it in the IRW on an annual basis.

In order to comply with this Court's Order dated December 7, 2007 (Dkt. No. 1409), Tyson Chicken has estimated the total number of birds raised each year from 2000 through 2007 on poultry growing operations under contract with it in the IRW. The following steps, assumptions, and calculations were required to arrive at this estimate. First, Tyson Chicken identified all poultry growing operations under contract with it between January 2000 and December 2007 believed to be or to have been located in the IRW. Second, Tyson Chicken retrieved from its Grower Information System the total reported number of birds placed at each identified broiler and pullet operation and the number of birds sold from each identified broiler and hen operation during each year from 2000 to 2007. Third, the following calculations were performed.

With respect to broilers, to account for mortality, the number of chicks placed and the number of birds sold were averaged with respect to each flock placed at a poultry growing operation under contract with Tyson Chicken located in the IRW. Those average numbers were

then aggregated on an annual basis, resulting in the total number of birds per year located on poultry growing operations under contract with Tyson Chicken in the IRW.

With respect to pullets and males, because chick suppliers provide 2% more birds to Tyson Chicken than are actually ordered and recorded as the number of chicks placed in order to account for sex slip errors, it is necessary to adjust the recorded number of chicks placed. To determine an accurate number of chicks placed ("adjusted number of chicks placed"), the recorded number of chicks contained in flocks placed on pullet operations under contract with Tyson Chicken in the IRW was increased by 2%. To account for flock mortality, the seven-year average mortality rate for capitalized flocks (age 25 weeks) of males and pullets was applied to reduce by twenty weeks of mortality the adjusted number of chicks placed in each flock on pullet operations under contract with Tyson Chicken in the IRW. The resulting number is the number of birds moved from the pullet operation to a hen operation at twenty weeks. The adjusted number of chicks placed and the calculated number of birds moved from the pullet operation at twenty weeks were averaged to determine the number of birds located on pullet operations under contract with Tyson Chicken in the IRW on a per flock basis. The average numbers of birds for each flock were aggregated on an annual basis to provide the number of pullets and males located on pullet operations under contract with Tyson Chicken within the IRW annually.

With respect to hens and males, the recorded number of chicks sold per flock from hen operations under contract with Tyson Chicken in the IRW was increased by five weeks of mortality, using the seven-year average mortality rate for capitalized flocks (age 25 weeks), to arrive at the number of birds actually placed. The calculated number of birds placed was then averaged with the number of birds sold per flock to arrive at an average number of hens and males located on the hen operation under contract with Tyson Chicken with respect to a

particular flock. These averages were then aggregated on an annual basis to provide a total number of hens and males located on poultry growing operations under contract with Tyson Chicken annually.

Because birds are moved from pullet farms under contract with Tyson Chicken to hen farms under contract with Tyson Chicken, it is necessary to adjust the number of hens placed on poultry growing operations under contract with Tyson Chicken to eliminate the possibility of counting the same bird twice. It would be overly burdensome to actually track the movement of all Tyson pullets located in the IRW over the past seven years from pullet operations to hen operations. To do so would require manual review of each flock transfer register generated with respect to pullet growing operations located in the IRW during the relevant time period. Flock transfer registers are generated on a weekly basis, and the number of reports to be reviewed would be extremely large. Additionally, flock transfer registers do not exist for certain calendar years within the relevant time period, and such tracking of bird movement is impossible for those years. Therefore, a reasonable estimated reduction, based upon the percentage of pullet farms under contract with Tyson Chicken located in the IRW as compared to the total number of pullet farms under contract with Tyson Chicken was made to the total number of hens as calculated through the method described above.

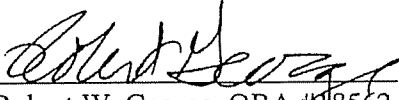
Subject to the foregoing qualifications and without waiving its objection, Tyson Chicken provides the following estimate of the aggregated total number of broilers, pullets, and hens located annually on poultry growing operations under contract with Tyson Chicken in the IRW.

<u>Year</u>	<u>Total Number of Birds</u>	<u>Year</u>	<u>Total Number of Birds</u>
2000	45,817,476	2004	48,840,045
2001	43,329,623	2005	50,207,427
2002	38,808,771	2006	49,315,176
2003	43,727,332	2007	45,563,693

The above figures are estimates only. The reliability and error rate in these estimates is unknown at this time. Tyson Chicken reserves the right to challenge these estimates as unreliable if presented in court and further reserves the right to revise or supplement these estimates if additional information is obtained or a more reliable methodology is identified.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I certify that on the 7<sup>th</sup> day of January 2008, I electronically transmitted the foregoing documents to following:

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I also hereby certify that I served the foregoing documents by United States Postal Service, proper postage paid, on the following:

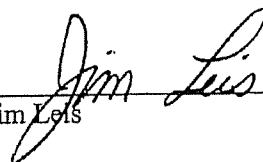
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**COUNSEL FOR PLAINTIFFS**

  
Robert W. George

VERIFICATION

STATE OF ARKANSAS            }  
   } §§  
 COUNTY OF WASHINGTON        }

I, Jim Leis, being duly sworn on oath, state that I have read Tyson Chicken, Inc.'s Second Amended Response to Plaintiffs' First Set of Interrogatories and that the facts and matters contained therein are true and correct to the best of my knowledge, information, and belief.

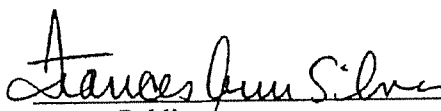
  
 \_\_\_\_\_  
 Jim Leis

ACKNOWLEDGEMENT

STATE OF ARKANSAS            }  
   } §§  
 COUNTY OF WASHINGTON        }

On this date, Jim Leis did appear before me, the undersigned Notary Public and executed the foregoing document of his own free will and volition, and for the purposes stated therein.

Subscribed and sworn before me, the undersigned Notary Public, within and for the above County and State, this the 1<sup>st</sup> day of January, 2008.

  
 \_\_\_\_\_  
 Notary Public

My commission expires:

10/3/2013

